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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,280	01/23/2004	Gary Malcolm Briscoe	7423	9687

7590 04/06/2005  
Gauthier & Connors LLP  
Suite 3300  
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Boston, MA 02110

EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/764,280

Applicant(s)

BRISCOE, GARY MALCOLM

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's Amendment submitted 22 November 2004, and Supplemental Amendment submitted 13 January 2005. Claims 1-10 are pending in the application. Claim 11 has been canceled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

3. The drawings are objected to because Figures 1 & 2 have gaps in portions that would appear to be solid from the description. Also, notation 25 in Figure 2 has no lead line.

Applicant argues that the dash-dot lines indicate that the packages can be of any length; this usage is inconsistent with standard drafting practice. The type of dash-dot line the applicant appears to be using is customarily used for phantom lines, which depict the shape of items not present. As the specification as originally filed does not mention this variability, the applicant's usage of the dash-dot line would cause confusion as to the structure depicted, and one of ordinary skill in the art would not deduce the purported meaning of the lines from the drawings as presented.

Applicant mentions a corrected Figure 2 in the remarks of the amendment submitted 22 November 2004; however, the Office has received no replacement drawing.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. The objection to claim 11 is rendered moot by its cancellation.

#### ***Claim Rejections - 35 USC § 112***

5. Applicant's amendment has overcome the rejection of claim 4 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph; the rejection is hereby withdrawn.

***Claim Rejections - 35 USC § 102***

6. Claims 1-6, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Urciuoli et al (US 5,507,406).

Regarding claim 1, Urciuoli et al discloses a blister pack (Figure 3) with a front part **310** having recessed portion **311**, a back part **350** having a relieved portion **351** arranged as claimed, and locating means **355 & 348** comprising an abutment **348** on the inner wall of front part **310**, and abutment **355** on the outer wall of back part **350**. The pack of Urciuoli et al is arranged and functions as claimed.

As to claim 2, Urciuoli et al discloses flange **317**.

As to claim 3, Urciuoli et al discloses aperture **315** capable of use as claimed.

As to claim 4, Urciuoli et al discloses deformation **341**.

As to claim 5, Urciuoli et al discloses abutment **348** as a continuous ridge.

As to claim 6, Urciuoli et al discloses abutment **355** as a continuous flange.

As to claim 9, Urciuoli et al discloses plinth **322**.

As to claim 10, Urciuoli et al discloses a snap action closure.

***Claim Rejections - 35 USC § 103***

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Urciuoli et al (US 5,507,406).

Urciuoli et al discloses the claimed invention except for the translucent material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the pack of Urciuoli et al from a translucent material, since it has

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been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

8. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goulette (US 5,220,999) in view of Urciuoli et al (US 5,507,406).

Regarding claim 1, Goulette discloses a blister pack **10** with a front part **20** having a recess **22** and a back part **12** having a relieved portion **14**. Goulette discloses a locating means (see Figure 4) with abutments **34 & 36** cooperating to close the pack.

Goulette lacks, or does not expressly disclose the back portion wholly within the front part.

Urciuoli discloses a closure means with a back part **350** having abutment **355** wholly within a front part **310** and abutment **348**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the blister pack of Goulette with a closure means as taught by Urciuoli et al in order to provide an indication of when the container has been opened.

As to claim 2, Goulette discloses flange **28**.

As to claim 3, Goulette discloses aperture **18**.

As to claim 4, Urciuoli discloses peripheral formation **341**.

As to claim 5, Urciuoli discloses ridge **348**.

As to claim 6, Urciuoli discloses flange **355**.

As to claim 7, Goulette discloses hinge **30**.

As to claim 8, Goulette-Urciuoli discloses the claimed invention except for the translucent material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the pack of Goulette-Urciuoli from a translucent material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As to claim 9, Urciuoli discloses plinth **322**.

As to claim 10, the pack of Goulette-Urciuoli discloses a snap fit (see Urciuoli et al, Abstract).

### ***Response to Arguments***

9. Applicant's arguments filed 22 November 2004 have been fully considered but they are not persuasive. Applicant's amendment has overcome the rejections under 35 USC §§102(b) & (e) of claims 1, 2, 5-7, and 9-11 as anticipated by either Cox or Johnson et al. However, embodiments of previously supplied Urciuoli et al read on amended claims 1-6, 9, and 10.

10. In response to applicant's arguments against the Goulette and Urciuoli et al references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

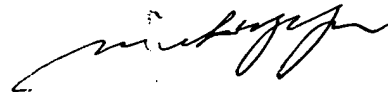


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*for*

Greg Pickett  
Examiner  
29 March 2005



Mickey Yu  
Supervisory Patent Examiner  
Group 3700